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BEFORE THE ARIZONA CORPORATION C

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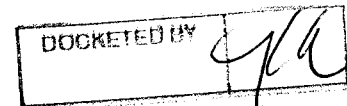
IN THE MATTER OF THE APPLICATION
OF TUCSON ELECTRIC POWER COMPANY
FOR THE ESTABLISHMENT OF JUST AND
REASONABLE RATES AND CHARGES
DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE
OF THE PROPERTIES OF TUCSON
ELECTRIC POWER COMPANY DEVOTED
TO ITS OPERATIONS THROUGHOUT THE
STATE OF ARIZONA AND FOR RELATED
APPROVALS.

DOCKET NO. E-01933A-15-0322

Arizona Corporation Commission

DOCKETED

JUN 24 2016



DOCKET NO. E-01933A-15-0239

IN THE MATTER OF THE APPLICATION
OF TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS 2016 RENEWABLE
ENERGY STANDARD AND TARIFF
IMPLEMENTATION PLAN.

STAFF'S REPLY BRIEF

The Utilities Division ("Staff") of the Arizona Corporation Commission ("ACC" or "Commission") hereby files its reply to the briefs filed on June 10, 2016. Staff continues to recommend:

- Denial of the expansion of Tucson Electric Power Company ("TEP") TEP Owned Residential Solar ("TORS") program;
- Approval of the Residential Community Solar ("RCS") program with Staff's recommended modifications pertaining to annual adjustments, third-party purchased power agreements ("PPA"), and newly built facilities;
- Any rate and tariff associated with an approved RCS be cost of service based, and approved in the pending TEP rate case;
- If the Commission approves the RCS program, it be considered residential distributed generation ("DG") for purposes of REST compliance;

- TEP be permitted to fulfill its advisory group requirement through active participation in Arizona Public Service Company's ("APS") advisory group, as discussed in Staff's Opening Brief.

There are two threshold questions in this case: Whether TEP may determine the type and location of the generation resources it constructs or purchases the power from, as part of its obligation to provide safe, reliable, and adequate service to the customers within its service territory, and whether the Commission has the authority to approve the TORS and RCS programs and their associated tariffs? The answer to both of these questions is yes.

It is within TEP's management prerogative to construct rooftop solar and utility scale community solar. Similarly, it is within the Commission's authority and jurisdiction to approve or disapprove TEP's RCS program and tariff, and the expansion of the TORS program. Given this, the question becomes: *should* the Commission approve the requested expansion of the TORS program and approve the RCS program and tariff based on the record in this case? In sum, Staff recommends approval of the RCS program, with the rate and tariff to be addressed in TEP's pending rate case. However, Staff believes it is premature to expand TEP's TORS program based on the record in this case.

I. RESPONSE TO TEP'S INITIAL POST HEARING BRIEF.

Staff agrees, in large part, with the positions TEP has put forth in its post hearing brief, except for its conclusion supporting expansion of the TORS program at this time. Staff concurs with TEP's assertion that Arizona has retained the traditional vertically integrated utility model where a single utility offers generation, transmission, and distribution services within its certificated area.¹ Further, Staff agrees that, in general, it is appropriate for TEP to build and own solar generation assets as a means of meeting the requirements of the REST rules. This includes rooftop solar assets under the existing TORS program and community solar assets under the RCS program, subject to consideration of less costly compliance avenues.² In fact, as a vertically integrated utility, TEP may be required to

¹ TEP Br. at 2:16-17.

² *Id.* at 3:10-12; Tr. at 636.

1 construct or purchase power from any variety of generation assets, including DG, in order to provide
2 safe, reliable, and adequate service to its customers. As correctly noted by the Company, the
3 Commission evaluates the prudence of those decisions in subsequent rate cases.³

4 The existing TORS program and the proposed RCS program will provide TEP customers with
5 additional choices that would not otherwise exist. Staff does not believe that these limited programs
6 would implicate any antitrust issues as suggested by the Energy Freedom Coalition of America
7 ("EFCA"). The existing TORS program is limited to approximately 600 customers and expenditures
8 of \$10 million dollars.⁴ Similarly, the proposed RCS program is limited to \$10 million and 5 MW of
9 utility-owned generation.⁵ Further, the rates under these programs are, or would be, authorized by the
10 Commission pursuant to its constitutional authority before going into effect.⁶

11 **A. The TORS Program Should Not Be Expanded At This Time.**

12 There is merit in TEP's TORS program as it can provide important benefits to TEP and its
13 ratepayers alike. For example, the systems installed under the program are designed to peak in the late
14 afternoon, more closely matching TEP's summer peak.⁷ In addition, these systems will give the
15 Company direct control over targeting specific areas where solar DG would benefit the TEP system
16 and reduce the likelihood for costly upgrades.⁸ However, Staff does not believe TEP has demonstrated
17 that the TORS program is cost effective. The Company is participating in an advisory group with APS
18 to determine just that.

19 Further, as part of its 2016 REST plan filing, including the TORS program as a pilot program,
20 TEP was required to provide a report on the feasibility, costs, benefits, and other aspects of larger scale
21 DG options, either company-owned or through PPAs.⁹ Ultimately, if TEP wishes to propose an
22 implementation plan as part of its REST activities, it needs to prepare a report that includes a
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24 ³ TEP Br. at 3.

25 ⁴ Gray Direct at 7:4-7.

26 ⁵⁵ *Id.* at 13:13-15.

27 ⁶ Ariz. Const. Art. 15 section 3.

28 ⁷ TEP Br. at 9:9-16.

⁸ *Id.*

⁹ Gray Direct at 8.

1 comparison of company-owned and customer-owned DG options.¹⁰ Finally, TEP was required to
2 include a discussion of the utility-owned residential DG in its annual REST plan filings, beginning with
3 the 2016 REST plan to be filed in July 2015, as long as the program continues to exist.¹¹

4 However, as of the start of these proceedings, several of these requirements remained
5 outstanding regarding the reporting of program results, cost/benefits, etc.¹² Staff does not find fault
6 with TEP in this regard because the program is still in its infancy.¹³ Moreover, the program has taken
7 longer to implement than initially expected. Specifically, TEP initially indicated that it expected 600
8 installations to be completed by the end of the first quarter of 2016. Now, the Company estimates it
9 may hit the installation cap in August of 2016. Ultimately, Staff believes that prudence dictates that
10 the TORS pilot program be “built out,” and the required reporting be completed before the Commission
11 considers any expansion as requested by TEP.¹⁴ Finally, given its initial approval as a pilot, Staff
12 believes that any expansion of the TORS program going forward should also require that the rate and
13 tariff not result in subsidized services.¹⁵ Absent fulfillment of the pilot requirements and a
14 demonstration that the rooftop program is cost competitive with a similar community solar program or
15 similarly situated resources, Staff does not plan to support an expansion of the TORS program in the
16 future.¹⁶

17 **B. The Commission Should Approve The RCS Program With Modifications.**

18 Staff and TEP agree that the proposed RCS program is in the public interest, and that it should
19 be treated as residential DG under the REST rules. The proposed RCS program provides customers
20 with greater access to solar than would otherwise be available.¹⁷ Further, TEP states that due to
21 economies of scale the initial capital costs for the RCS are significantly less than the TORS program
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24 ¹⁰ Gray Direct at 9:1-5.

25 ¹¹ *Id.* at 9:67-10.

26 ¹² *Id.* at 9:13.

27 ¹³ *Id.* at 9:14-16.

28 ¹⁴ *Id.*

¹⁵ *Id.* at 11.

¹⁶ *Id.*

¹⁷ *Id.* at 16:5-7; Tilghman Direct at 23.

1 and third-party rooftop systems.¹⁸ Specifically, TEP indicates that third-party rooftop systems cost
2 \$2.50 to \$2.85 per watt, and the TORS program approximately \$2.20. Comparatively, the RCS
3 program is estimated to cost \$1.60 to \$1.70 per watt.¹⁹ The Company also states that customers will
4 benefit from economies of scale related to operation and maintenance expenses under the RCS
5 program.²⁰

6 Staff also agrees with TEP's recommendation to have separate 5MW caps for TEP-owned RCS
7 facilities and PPA-based RCS facilities. Further, Staff agrees that it is appropriate for TEP to use land
8 it owns for potential RCS sites, provided the land and facilities are located on TEP's distribution
9 systems. Prudence would be determined in a future rate case proceeding.

10 Staff continues to recommend that only new facilities constructed by or for TEP would qualify
11 for RCS treatment, in addition to PPAs. Should the Commission find the program in the public interest,
12 the rate and tariff for the RCS program will be addressed in TEP's pending rate case. That being said,
13 Staff believes that the rate should be based on the specific costs of serving RCS customers, to the extent
14 possible, and that TEP should be required to provide that information.

15 **II. RESPONSE TO EFCA's POST HEARING BRIEF.**

16 In this case, EFCA argues that the expansion of the TORS program and creation of the RCS
17 program are not in the public interest because they were designed to eliminate DG solar competition,
18 and that, in fact, they will eliminate competition.²¹ However, based on the record in this case, EFCA
19 has not demonstrated *any* intent on the part of TEP to eliminate DG solar competition in its service
20 territory, or that the expansion of the TORS program and approval of the RCS program *will* eliminate
21 DG solar competition in its service territory.

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26 ¹⁸ TEP Br. at 11:1-5.

27 ¹⁹ *Id.*

28 ²⁰ *Id.*

²¹ EFCA Br. at 2, 9.

1 **A. There Is No Evidence In This Record That The TORS And RCS Programs Were**
2 **Designed To Eliminate Competition.**

3 EFCA boldly asserts that TEP has intentionally designed the TORS and RCS programs with
4 the sole purpose of eliminating DG solar competition in its service territory.²² In support of its
5 contention, EFCA raises three overarching arguments. First, EFCA argues that “competition policy
6 should inform the public interest analysis in circumstances such as this one where a proposal clearly
7 threatens to undermine competition.”²³ EFCA cites to A.R.S. § 40-202(B) in support of this
8 proposition.²⁴ However, as addressed more fully in Staff’s Opening Brief, this statute was originally
9 enacted at a time when Arizona was contemplating a change to competition in the sale of electric
10 generation service, and confirmed the Commission’s authority to make that transition to competition
11 for electric generation service.²⁵ EFCA admits that never occurred.²⁶ EFCA further acknowledges that
12 TEP is a public service corporation, operating under a certificate of convenience and necessity, and
13 that questions regarding its activities are not exclusively governed by competition.²⁷

14 On the one hand, EFCA, without citation, asserts that “preserving competition should
15 appropriately inform the Commission’s analysis in this instance;”²⁸ while on the other hand, EFCA
16 admits that the Commission does not have an obligation to ensure that nonregulated businesses such
17 as rooftop solar installers stay in business.²⁹ Although both TEP and Staff agree the issue of
18 competition may be relevant to the Commission’s determination in this case,³⁰ it is not necessarily to
19 ensure that the market continues to exist per se, but to ensure the market exists so that customers of
20 utilities benefit from the competition, and so that the utilities have the ability to comply with the policies
21 and rules of the Commission. Importantly, none of this demonstrates any intent on the part of TEP to
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23 ²² EFCA Br. at 2.

24 ²³ *Id.*

25 ²⁴ *Id.* at 3.

26 ²⁵ Staff’s Op. Br. at 16.

27 ²⁶ Tr. at 414, Tr. at 561

28 ²⁷ *Id.*

29 ²⁸ *Id.*

30 ²⁹ Tr. at 419.

³⁰ *Id.* at 275; Gray Direct at 1:26-2:2.

1 eliminate DG solar competition.

2 Next, EFCA asserts that “TEP’s TORS and RCS programs make no sense but for their ability
3 to eliminate competition.”³¹ EFCA makes the unsubstantiated claim that the true purpose of these
4 programs is readily apparent when one considers that that they cannot be justified on any ground, other
5 than TEP’s desire to monopolize the DG solar segment to enable it to meet its REC requirement solely
6 through its own offerings.³² EFCA attempts to support this claim by asserting that the proposals will
7 create a cost shift, they will do nothing to promote energy efficiency, and that they are not rational
8 pricing policies.³³ Each contention is unsupported by the record and without merit.

9 As proposed by TEP, both the RCS program and the TORS program have a flat kW charge, a
10 fixed contract duration, and a plus or minus 15 percent range on customer usage. EFCA claims that by
11 guaranteeing extended fixed monthly electricity bills for consumers who stay within a 15 percent range
12 of their prior energy usage, TEP is disregarding the risk that costs will increase for which TEP
13 ratepayers will be responsible.³⁴ EFCA is also critical of the fact that the facilities for both of these
14 programs could ultimately end up in rate base with all ratepayers being responsible for the return on
15 and of these investments.³⁵ The realities of this case refute these criticisms. First, and most
16 importantly, the cost and prudence of the facilities would be reviewed by the Commission in a future
17 rate case before they would be allowed in rate base. Also, the facilities under both of these programs
18 are not on the customer’s side of the meter. This is a significant distinction between these innovative
19 program offerings and any that would be made by a third-party solar installer. These facilities benefit
20 all ratepayers, and conceivably could reduce the need for costly upgrades to TEP’s distribution system.
21 Second, the fixed contract duration for the TORS is based on the anticipated lifespan of the solar
22 facility. With the RCS program, the 10 years was chosen so that TEP could recover the majority of the
23 costs of the facility through the participating customers.³⁶ These terms reduce the cost shift that EFCA
24 claims these programs will create.

25 _____
31 EFCA Br. at 3:12-13.

26 32 EFCA Br. at 3.

27 33 *Id.*

34 *Id.*

28 35 *Id.*

36 Tr. at 190.

1 EFCA's claim that the structure of the tariffs, as proposed, will encourage customers to use
2 more energy, not less, is unsupported. Specifically, EFCA asserts that a flat-rate tariff with a fixed cost
3 of energy based within a band of plus or minus 15 percent (calculated annually) creates no incentives
4 for users to manage their energy requirements within the band, nor shape their usage to reduce peak-
5 period usage.³⁷

6 It is mere speculation on EFCA's part to assert that customers will not conserve under these
7 tariffs. Nonetheless, Staff is recommending that the rate and tariff for the RCS program and the
8 expansion of the TORS program, if approved, be addressed in TEP's pending rate case. Also, Staff
9 acknowledges EFCA's concern regarding conservation, and is recommending that, in lieu of the 15
10 percent provision for the RCS program, TEP adjust the customer's charge each following year for any
11 movement in the customer's average monthly usage, higher or lower, in the previous year.³⁸ This
12 modification would address EFCA's concern about conservation.

13 Even if EFCA's concerns regarding the characteristics of the programs were correct and
14 supported, which they are not, none of this demonstrates intent on the part of TEP to eliminate
15 competition in the DG solar market in its service territory. As noted in this case, Solar City, a member
16 of EFCA, has 70 percent of the rooftop solar market in TEP's territory.³⁹

17 Next, EFCA claims that these programs will unnecessarily burden ratepayers.⁴⁰ EFCA
18 premises this argument on the fact that if TEP's investments in the TORS and RCS programs are found
19 to be prudent they will be placed in rate base and all TEP ratepayers will be responsible for paying for
20 those investments.⁴¹ What EFCA fails to recognize or acknowledge is how most generation is treated.
21 If TEP builds a natural gas or coal generation facility, and it is found prudent, it is placed in rate base
22 for all ratepayers to pay the return on and of that investment. That scenario shouldn't change simply
23 because of the type and location of the generation facility. The facilities under both of these programs
24 benefit all ratepayers. As noted by TEP, these programs are essentially green pricing tariffs that are

25 ³⁷ EFCA Br. at 5:4-6.

26 ³⁸ Gray Resp. at 3:3-5.

27 ³⁹ Tr. at 66:8-18.

27 ⁴⁰ EFCA Br. at 6:14.

28 ⁴¹ *Id.* at 7.

1 linked to specific facilities.⁴² These facilities are not on the customer side of the meter so the electricity
2 generated by them benefits all TEP ratepayers and potentially reduces the need for future upgrades to
3 the distribution system. As TEP noted, the cost shift that occurs under these programs is much less
4 than occurs from third-party solar.⁴³

5 EFCA also asserts that TEP cannot exploit its REST obligations to justify these programs.⁴⁴
6 Essentially, EFCA argues that these programs should not be determined to be in the public interest
7 simply because TEP wants these programs as a way of obtaining RECs to count towards its residential
8 DG obligation.⁴⁵ While that certainly may be a positive fallout of these programs, it does not appear
9 that is TEP's primary reason for requesting them. TEP proposed these programs because there was
10 customer interest, and there is a benefit to having a diverse resource portfolio.⁴⁶ As succinctly stated
11 by the Company, "it is not anticompetitive for TEP to invest in renewable DG capacity necessary to
12 comply with its REST obligations mandated by this Commission."⁴⁷ Simply stated, this is something
13 TEP is likely obligated to do, absent a waiver, in order to provide safe, reliable, and adequate service
14 to its customers. The only question that remains is whether those investments, once made, are prudent.

15 **B. There Is No Evidence In The Record That TEP's Programs Will Eliminate**
16 **Competition.**

17 EFCA contends that not only is it TEP's intention to eliminate competition, but that the
18 proposed programs *will* in fact eliminate competition. EFCA principally argues that: these proposals
19 threaten competition in DG solar, allowing TEP to use its monopoly status in the competitive DG solar
20 market will eliminate competition, and TEP is expressly requesting a monopoly in community solar
21 with the RCS program.⁴⁸

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24 ⁴² Tr. at 184.

25 ⁴³ Tilghman Direct at 15-17.

26 ⁴⁴ EFCA Br. at 8:3.

27 ⁴⁵ *Id.* at 8:4-11.

28 ⁴⁶ Tr. at 79:15-80:2.

⁴⁷ TEP Br. at 14:21, 15:4.

⁴⁸ EFCA Br. at 9, 10, and 12.

1 In arguing that these programs will threaten competition in solar DG, EFCA asserts that
2 residential DG solar is competitive because it is provided by numerous vendors, and as a result there is
3 increased innovation and falling prices.⁴⁹ Although EFCA asserts the DG solar market is competitive,
4 it is unclear exactly how competitive that market is in TEP's service territory given that Solar City, a
5 member of EFCA, has approximately 70 percent of that market.⁵⁰ What is clear is that the solar DG
6 market is not currently regulated by the Commission.⁵¹ EFCA also acknowledges that, absent the
7 Commission's rules regarding net metering and the DG carve out of the REST rules, there would be
8 no "vibrant" or "robust" solar DG market in TEP's service territory.⁵²

9 EFCA next argues that TEP is seeking to extend its rate-based, rate-of-return service offering
10 into a "competitive industry"⁵³ which is a prescription for the elimination of competition in the solar
11 DG market in its service territory.⁵⁴ It is apparently EFCA's position that there is a fundamental
12 unfairness in TEP being able to construct, or purchase power from, a solar facility in conjunction with
13 green pricing tariffs for the TORS and RCS programs, even though EFCA admits this is not an offering
14 that any of its members could provide.⁵⁵

15 Further, there is no dispute in this case that the manner of installation and the location of the
16 facilities that would be installed under either of these programs are within TEP's control. This would
17 not be the case if TEP had to rely on third-party installers. In other words, what is offered through
18 these proposals is not in competition with what third-party installers could offer. The TORS program
19 requires DG to be installed within a limited orientation range that is heavily biased to the west, with
20 the focus on maximizing generation during the late afternoon in an attempt to better align production
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22 ⁴⁹ *Id.*

23 ⁵⁰ Tr. at 66.

24 ⁵¹ See Decision No. 71795. (Indicating when SolarCity Corporation provides services to a school,
25 government, or non-profit entity, specifically limited to such an individual customer serving only a
26 single premises of that customer, pursuant to a Solar Services Agreement as described herein,
SolarCity is not acting as a public service corporation.)

26 ⁵² Tr. at 551:9-24.

27 ⁵³ EFCA Br. at 10:18-21.

27 ⁵⁴ *Id.*

28 ⁵⁵ *Id.* at 11:8.

1 with TEP's late afternoon summer peak.⁵⁶ Whereas, a typical customer-owned or leased PV facility is
2 designed for maximum production throughout the year, regardless of when that production occurs and
3 its impact on the grid.⁵⁷ Also, the RCS program offers options to TEP customers that they may not
4 otherwise have because their roof is not suitable for rooftop solar.⁵⁸

5 Staff also recommends that only a newly constructed solar facility or a new PPA qualify for
6 this program.⁵⁹ The reality is that the existing TORS program (or an expansion thereof) and the
7 proposed RCS program are very limited in nature. The existing TORS program is for 600 customers
8 and \$10 million dollars.⁶⁰ TEP is requesting another \$15 million to increase participation by up to
9 1000 customers.⁶¹ Similarly, with the RCS program TEP is seeking approval of \$10 million that could
10 serve up to 900 customers. Yet, despite the clear, limited parameters of these programs, EFCA attempts
11 to paint a picture of an unfettered TEP expanding these programs without Commission approval to a
12 point that would ultimately eliminate the solar DG market in the Company's service territory.⁶² That
13 is simply not borne out by the record in this case. Moreover, even if that were true, it would be contrary
14 to what the Commission has approved, and TEP would risk being unable to recover the cost of its
15 investments beyond that approved by the Commission.

16 EFCA next suggests that if TEP's participation in DG solar is in the public interest, its
17 participation can be accomplished using existing Commission regulation and having TEP establish
18 affiliates that provide rooftop and/or community solar.⁶³ EFCA bases this argument on the existence
19 of Article 16 of the Arizona Administrative Code which sets forth the Commission's retail electric
20 competition rules. On the one hand, EFCA acknowledges that the Arizona Court of Appeals
21 determined some of these rules were unconstitutional or needed further approval by the Arizona
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24 ⁵⁶ Tilghman Direct at 14.

25 ⁵⁷ *Id.*

26 ⁵⁸ Tilghman Direct at 23:11-21.

27 ⁵⁹ Tr. at 578:2-11.

28 ⁶⁰ Tilghman Direct at 6.

⁶¹ Gray Direct at 7:21-22.

⁶² EFCA Br. at 18:12-19:2.

⁶³ *Id.* at 20:18-22.

1 Attorney General, and that direct retail competition had not gone into effect.⁶⁴ On the other hand,
2 EFCA nonetheless asserts that R14-2-1616 is in effect and that it represents the Commission's
3 considered judgment on how to precisely address the issues that would arise should TEP be permitted
4 to enter the DG solar segment *beyond the initial TORS pilot*.⁶⁵ As discussed in Staff's Opening Brief,
5 Article 16 is a set of rules intended to have provided a transition path to retail electric competition in
6 Arizona. That never occurred. Due to the *Phelps Dodge* decision, those rules now amount to an
7 incomplete and out of date scheme. As correctly noted by TEP, Arizona retained the "traditional,
8 vertically integrated utility model, where a single utility offers generation, transmission, and
9 distribution services to a fixed service area."⁶⁶ It is appropriate for utilities to own a diverse and balanced
10 portfolio of generation assets. That is the ultimate purpose of the REST Rules.⁶⁷

11 EFCA also asserts that TEP's request to waive the requirement that DG be sited at a customer's
12 premises under the REST rules be rejected.⁶⁸ It is EFCA's contention that this revision would eliminate
13 the requirement that DG resources be located on a customer's premises, thereby laying the groundwork
14 for the RCS program.⁶⁹ As noted by the Administrative Law Judge, if the Commission determines that
15 it is in the public interest that the RCS program should qualify for the DG carve out under the REST
16 Rules, the tariff and rate will be considered in the pending rate case.⁷⁰ The Commission may waive
17 compliance with any provision of the REST Rules for good cause.⁷¹

18 It is Staff's position that good cause exists in this case. Limiting all DG to only customer
19 premises may foreclose opportunities to install renewable resources at the least cost while providing
20 the most benefit.⁷² Staff believes that not allowing a facility that is connected to the distribution system
21

22 ⁶⁴ *Id.*; See *Phelps Dodge v. Arizona Elec. Coop.*, 207 Ariz. 95, 83 P.3d 575 (App.2004).

23 ⁶⁵ *Id.*

24 ⁶⁶ TEP Br. at 2.

25 ⁶⁷ *Miller v. Ariz. Corp. Comm'n*, 227 Ariz. 21, 29, ¶ 31, 251 P.3d 400, 408 (App. 2011).

26 ⁶⁸ EFCA Br. at 22:12-13.

27 ⁶⁹ *Id.* at 22:18-19.

28 ⁷⁰ Proc. Order at 4 (April 6, 2016).

⁷¹ *Sierra Club v. Ariz. Corp. Comm'n*, 237 Ariz. 568, ¶ 15, 354 P.3d 1127, 1133 (App. 2015), review denied (Feb. 9, 2016).

⁷² Gray Direct at 6.

1 but is not on a customer's premises to qualify as DG is arbitrary.⁷³ Further, it is Staff's understanding
2 that having a community solar facility connected to the distribution grid was not contemplated at the
3 time the REST Rules were promulgated.⁷⁴ EFCA apparently agrees with this point asserting that
4 community solar is a rapidly emerging source of solar energy.⁷⁵ Community solar has become
5 increasingly popular in the United States in recent years.⁷⁶ TEP indicates that having larger solar
6 facilities tied to the distribution system provides a benefit to the system as a whole.⁷⁷ The Commission
7 has granted a waiver to TEP to count installations under its Bright Roofs program as DG for compliance
8 purposes.⁷⁸ Further, the Arizona Court of Appeals determined that providing substantial benefit to a
9 utility's infrastructure is sufficient good cause for providing a waiver.⁷⁹ That is exactly what TEP has
10 demonstrated in this case.

11 Finally, EFCA asserts that Arizona law does not preclude third-party participation in
12 community solar.⁸⁰ Staff agrees that there does not appear to be a legal impediment to allowing third-
13 party participation in the RCS programs through either "virtual net metering" or a "sleeving"
14 arrangement. However, Staff does not propose either in this case, but recommends that third-parties
15 participate through the use of a PPA. What is perplexing here is that EFCA, while apparently
16 advocating for participation through such mechanisms, simply dismisses any responsibility for
17 articulating how such tariffs should be structured to accomplish this goal.⁸¹ Specifically, EFCA simply
18 claims it is not its burden to do so. This is incorrect. If EFCA has a position it would like adopted in
19 a case, it has the burden of demonstrating how that position would be accomplished. EFCA has not
20 done that in this case.

21 ...

23 ⁷³ *Id.*

24 ⁷⁴ *Id.*

25 ⁷⁵ EFCA Br. at 15:15-17.

26 ⁷⁶ Gray Direct at 12:26-13:1-5.

27 ⁷⁷ Tr. at 68:22-69:8.

28 ⁷⁸ Gray Direct at 6:12-18.

⁷⁹ *Sierra Club--Grand Canyon Chapter v. Ariz. Corp. Comm'n*, 237 Ariz. 568, ¶ 20, 354 P.3d 1127,
1134 (App.2015), review denied (Feb. 9, 2016).

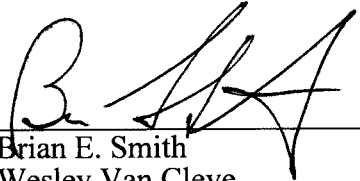
⁸⁰ EFCA Br. at 23:21-22.

⁸¹ *Id.* at 24:1-16.

1 **III. CONCLUSION.**

2 For the reasons stated above and in its opening brief, Staff recommends denial of the expansion
3 of TEP's TORS program; approval of the RCS program, with the tariff being addressed in the pending
4 rate case; that TEP be permitted to participated in APS's advisory group; and that the RCS program
5 qualify as DG under the REST Rules.

6 RESPECTFULLY SUBMITTED this 24th day of June, 2016.

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